

REMARKS/ARGUMENTS

Claims 23, 24, 37 and 39-42 are pending in the application.

Reconsideration and a withdrawal of the rejection is respectfully requested.

In the prior office action, the USPTO indicated that claims 10 and 12 contained allowable subject matter, and therefore, applicant, amended claim 37 to include the feature of allowable claim 10. Claim 12, also previously indicated to be allowable, was rewritten and presented as new claim 40.

The current office action sets forth new grounds for rejection of the claims. Applicant has reviewed the rejections in the office action and respectfully traverses them.

THE SECTION 112 REJECTION

Claims 37 and 40 stand rejected under 35 USC 112, second paragraph, as being indefinite. This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Claims 37 and 40 have been amended to refer to the -- admixture for consistency in the claims, for which there is antecedent basis in the claims.

Accordingly, the rejection should be withdrawn in view of the amendments.

THE 103(a) REJECTION OVER TIE SHOULD BE WITHDRAWN

Claims 23, 24, 37, 39 and 40-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tye (5,308,636). This rejection is respectfully but

strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Office Action considers that Tye relates to thickened and gelled systems based on starch and glucomannan. The office action further considers Tye to disclose an extruded snack in Example 6 that is made from konjac baking powder and cheese powder. The Office Action considers that “[t]he extrusion of the *product* under appropriate temperature is seen to provide the cooking temperature.” (emphasis added). The Office Action also considers that Tye discloses baking powder as a source of gas bubbles.

Applicant’s invention is not obvious over Tye.

Turning to example 6 of Tye, the Applicant’s present invention is not disclosed. Applicant’s claimed invention recites, as part of its food product, an admixture, and further recites that the admixture includes the konjac and the animal based protein, and further that the admixture is heated to above 100°C. The claimed admixture that comprises the present food product is not disclosed or taught by Tye. Tye fails to disclose the admixture claimed by the Applicant’s food product.

Each of the independent claims, 37 and 40, includes the recitation of a food product that includes an admixture of konjac glucomannan and animal based protein concentrate which are provided in a particular form, namely, a treated form where the admixture components are components of the claimed food product in the admixture that comprises the food product. Applicant's claimed food product comprises an admixture where the konjac glucomannan and the

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animal based protein concentrate are heated together to a temperature of over 100°C.

The Office Action mentions Tye's extrusion of "the product" as providing a cooking temperature. However, the Tye food product, in particular, even considering Tye's Example 6 that the Office Action refers to and cites as a basis for the present rejection, fails to disclose or teach that the konjac and cheese powder (what is considered in the Office Action to be the animal protein) are an admixture that is present in the food, and that the admixture, unlike Tye, is an admixture of the konjac and protein (cheese powder) which is heated to over 100°C. Tye discloses a food product that is something else, where, as in Example 6, there is a disclosure to disperse the konjac in water, not, as Applicant's food product claims, to prepare an admixture and provide a food product comprised of the admixture. Even if one were to consider Tye to disclose an admixture (which it does not), if anything, one would read Tye to disclose that such a mixture would be konjac and water, not konjac and the cheese powder. In addition, Tye fails to disclose the heating of the konjac and water to over 100°C, so once again, Tye does not provide the teaching of the Applicant's claimed invention. Tye also fails to disclose the Applicant's claimed admixture of konjac and animal protein, since the konjac slurry of Tye (not containing the cheese powder/the animal protein) is mixed with the other ingredients (i.e., the potato flakes, the starch, the salt, and the baking powder). So Tye actually teaches away from the Applicant's presently claimed invention.

Accordingly, the present invention is not obvious over Tye.

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In addition, Applicant's claimed invention is distinguishable over Tye for further reasons. The heating that the Office Action attributes Tye with disclosing is the extrusion referred to in Tye, which would include heating of all of the ingredients of Tye's extrusion product together, and not, as Applicant claims, the admixture of konjac and the animal protein (what the rejection considers as Tye's cheese powder). So Tye not only also fails to teach providing an admixture, but also an admixture claimed by Applicant as a component of the food product.

For these reasons, Tye fails to disclose or suggest the present invention.

Applicant further supports the patentability of the claims with legal authority that the admixture is recognized to support the distinction of the claimed food product invention over the cited art.

In *In re Herrick*, 55 CCPA 1238, 397 F.2d 332, 158 USPQ 90 (CCPA 1968), the CCPA considered a claim reciting an admixture to be patentable:

4. The resin-forming composition comprising a polymethylol phenol in the form of a heavy syrup having a mole ratio of combined formaldehyde-to-phenol of from 2.3 to 2.52 which is water insoluble containing no free formaldehyde and being free of inorganic material, and an alkali lignin which is free of inorganic material in **admixture** with the polymethylol phenol, said mixture being soluble in organic solvents including methanol and being condensable by heating to an insoluble, infusible resin which has low water absorption and high dielectric properties.

Here, Applicant's claims recite a food product comprising a dough. Applicant submits that the invention, as recited in claims 37 and 40, and claims dependent therefrom, should be patentable. Applicant recites a nonobvious food product, and the cited reference fails to disclose or suggest the present invention.

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Applicant has previously overcome rejections based on other cited references, and submits that the new ground of rejection, namely, over Tye, also has been respectfully traversed.

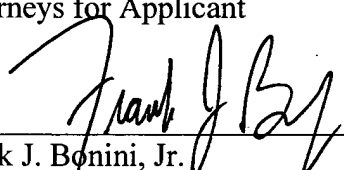
Reconsideration and a withdrawal of the 103(a) rejection is respectfully requested.

If further matters remain, the Examiner is invited to telephone the Applicant's undersigned representative to resolve them.

If necessary, an appropriate extension of time to respond is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
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